

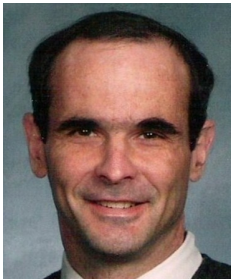
# Dental Practice Legal Update

February, 2019

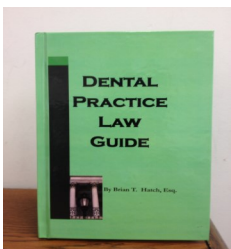
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Dental Practice Legal Update is published as a courtesy to the dental practices industry by:

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**Attorney Brian Hatch, publisher of Dental Practice Legal Update, has represented dental practices in business, employment, complex litigation and other legal matters. His latest book is "Dental Practice Law Guide" hatchlegalgroup.com**



## 3D Summit in Boston Deals with Regulatory Issues

Key manufacturers of innovations in 3D technology applicable to dentistry presented a conference on 3D Printing in Surgical Planning and Dental Industry at the end of January in Boston. John Hornick, an IP lawyer from SmartTech Publishing, spoke about the regulatory concerns in the industry as well as the multiple present and future uses of 3D printing in dentistry, particularly as new devices aimed at being more economically feasible for smaller practices are developed. As future applications such as 3D printed implants, dentures and other dental devices emerge, there will be more focus on the 2018 FDA set of guidelines for medical products involving 3D printing. Those recommendations referred to the ongoing development of regulations involving key quality controls standards that manufacturers will have to meet that concern material clean up and sterilization methods, mechanical inspection and testing, and design of new products. Standards for durability and biocompatibility will be important determinants in how such products as 3D printed dental implants are brought to market. These are just some of the challenges regulators and manufacturers will be dealing with in handling issues of approving the coming variety of requests from manufacturers to allow their products to become available. The types of software that can be used by dental personnel, and what kind of certifications or training will be required for these operators are also issues that new regulations must address.

## The Initial Steps in Looking at a Price for a Practice

Are you looking for a starting point on price when reviewing practices to purchase? With the market for practices varying so widely from location to location and the supply of practices available for purchase not always constant, there are a number of considerations that potential buyers should weigh in submitting an offer to purchase. Sellers too can offer something to make their practices more attractive, even if a broker represents them.

First, there must be a reputable, evidence based valuation presented to the purchaser by a seller. A key mistake for purchasers is not to look past the easiest way that many use to shop for a practice, the gross revenue for the previous year. A valuation which provides a detailed analysis of not just the gross revenue in the preceding year, but yearly profit for the owner, a comparison of prices for practices in that particular community, and figures showing the growth in revenue over the past several years are just some of a myriad of factors a good objective valuation weighs in arriving at a valuation estimate.

Sometimes, however, this valuation isn't available when scanning lists of practices available for sale. The least accurate valuation method, a multiplier of gross revenue for the previous year, can still be used if there is a good knowledge of the location of the practice and the price a purchaser is financially able to pay. Anywhere from 65-100% of gross revenue purchase prices are possible, depending

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## The Initial Steps in Looking for the Price of a Practice

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on the income level of the patient base and how it affects profitability through lower reimbursement rates of public insurance. If the buyer can afford to pay 75-80% of gross revenue, then further consideration is merited if the community has an average to above average median income.

Is the practice being offered by a broker, who is working for the seller, or the seller himself or herself? A seller without a broker or without an evidence based valuation of the practice indicates that further investigation is warranted. Even a broker, who has a professional reputation on the line when offering a practice for a certain price, is usually working for the

seller, and that must be considered. If a seller has a thorough objective valuation to present from an experienced dental evaluator, it lends credibility to a selling price.

A stable or growing profit margin and income levels of the owner and associates should be readily available from the seller, even without the important detailed valuation. If a buyer cannot expect a reasonable income for a good return on investment, and an ability to pay off any loans required to finance the purchase, then why take the time to make a serious offer or make further inquiry?

A preliminary factor to consider without a detailed analysis by a valuation expert which both the seller and the buyer can use in their decision on price is the length of time the practice has been in business to develop a strong patient base

and valuable good will. Good will is roughly 80% of the value of a practice in almost all cases, and longevity creates excellent good will and the best chance for continuation of an experienced and recognized dentist's career of developing a good reputation. Interviewing the seller is also a valuable indicator for a buyer to get an initial view of the trust that can be placed in the in any seller willing to sell the practice to retire or move on to something other than dentistry.

Weeding out potential practices that will not considered sometimes is difficult without detailed valuations or other data. Extensive due diligence should be conducted after a non-binding letter of intent is signed, which is always subject to that backing out of a deal with a deposit which can be returned. Signing a letter of intent to get an exclusive right to buy at a certain price is often rushed when competing offers are available, but preliminary due diligence is necessary before taking that step.

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## Suit Against Kool Smiles for Death of 2 Year Old Alleges Unsafe Procedures Promoting Profits

The death of a 2 year old Arizona boy after undergoing anesthesia during a dental procedure at Kool Smiles is under more scrutiny with further evidence of poor business practices contributing to a 2017 malpractice case. Zion Gasterlum was 2 years old when he became unresponsive while under anesthesia during a procedure for placing crowns. The suit alleges that a member of the practice staff silenced the alarm on the pulse oximeter, which monitors a patient's pulse and oxygen saturation, that an oxygen tank was not hooked up to Zion or was empty, and that he was left alone in the recovery room. The anesthesiologist handling the case, Aaron Roberts, was dealing with two child patients situated on the same dental chair during the situation. The lawsuit directs allegations at Kool Smiles business practices, stating that part of their business model is based on profit making, and to "maximize the productivity

of each clinic by scheduling the child-patients back-to-back, resulting in an insufficient amount of time between each child-patient for cleaning of the stations, monitoring of children who are recovering from various forms of anesthesia, and even to allow time for staff members to use bathroom facilities." A member of the Arizona Dental Board of Examiners stated after the investigation of Roberts that "this never would have come about had he spent the time with the patient in recovery to the point that he was on his own and out of danger. That is 100% his responsibility." Roberts entered into a consent agreement with the Board, however, that allowed him to continue practicing with probation on his anesthesia permit and take continuing education courses. The lawsuit in Zion's case against Kool Smiles and its staff is continuing, and adds to the legal problems for Kool Smiles, which recently settled a suit with the Department of Justice for \$23.8 million for allegations of submitting false claims for unnecessary procedures.

## Bacterial Infections Caused by Water Filtration Systems Prompt More Child Plaintiffs in Suit

An Anaheim, California dental

clinic which had been accused of performing hundreds and perhaps thousands of unnecessary pulpotomies on children is now being sued by 65 additional families on behalf of children who had contracted bacterial infections after those procedures. A poorly maintained water filtration system contributed to the evidence found in the clinic's water of the potentially deadly Mycobacterium abscessus. Over 150 families have filed suit thus far against Children's Dental Group which alleges negligence as well as "predatory dentistry where dentists received bonuses and incentives to perform these unnecessary procedures." The attorney for the families said that all of the children he represents are Latino and on the Medicaid program in California, Medi-Cal.

**Provide your employees required HIPAA training with an on-site presentation and manuals for employees and Privacy Officers. 508-222-6400**

**Attorney Brian Hatch has been practicing law for over 33 years and has focused on the dental industry since 1995.**

## **Study on Dental Floss Prompts Suit against Procter & Gamble**

A study published on January 8, 2019 in the Journal of Exposure Science & Environmental Epidemiology concluded that consumers using Oral-B Glide dental floss might subject themselves to higher levels of toxic fluorochemicals such as PFAS, or per- and polyfluoroalkyl substances. These are the chemicals in this particular brand of floss, sold by Procter & Gamble, that provide resistance to grease and water. The study was produced by the Silent Spring Institute in Newton, Massachusetts and the Public Health Institute in Berkeley, California. The study found higher levels of PFAS in women who used Oral-B Glide than those who did not. There were other types of activities looked at in the study, including having stain-resistant carpet or furniture or living in a city with drinking water contaminated by a PFAS. Other materials containing PFAS include other hygiene products, nonstick cookware, fast food wrappers and microwave popcorn bags. The US Environmental Protection Agency has stated that “exposure to PFAS can lead to adverse

human health effects.” PFAS toxic exposure has been linked to cancer, ulcerative colitis in adults, thyroid disease in children and other health problems.

Procter & Gamble is now facing a lawsuit, filed on January 11, 2019, just three days after the study was published, which seeks class action status and damages against P & G.

## **Former Dental Student Sues for Racial Discrimination**

A Iranian dental school student who was dismissed from the University of Missouri-Kansas City for failing to maintain a minimum GPA has now brought a discrimination lawsuit against the school because of the school’s appeals process. Afsaneh Momtahan was automatically dismissed from UM-KC in May of 2017 after failing to maintain the minimum 2.5 GPA for two consecutive semesters. The Academic Standard Committee denied her appeal to regain admittance, and Dean Marsha Pyle told her the Committee had concerns about her ability to meet the school’s standard for proficiency in English.

Momtahan’s suit alleges that of the three students who appealed dismissals because of inadequate GPAs, the Committee rejected appeals by Momtahan, who is an Iranian immigrant and a Hispanic woman, but reinstated a Caucasian man. Momtahan applied for the UM-KC master’s degree program for cellular and molecular biology after losing the appeal, and earned a 3.567 and 3.650 GPA in two semesters. She appealed again to Pyle but was rejected. Momtahan is now suing UM-KC for \$20.333 million, the amount she claims is the average lifetime salary for a dentist in Kansas City, as well as punitive damages.

***Brian T. Hatch Esq. is an experienced provider of legal services for dental practice purchasers and sellers.***

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***Attorney Hatch will speak at “3 Pillars of Dental Practice Transitions: Valuations, Legal Issues and Financing” in March, 2019 in Worcester, MA. Further details will be announced.***

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## **Pennsylvania Dentist Kept Drugs at Home and Failed to Keep Records of Prescriptions**

A Pennsylvania dentist, Thomas Bach, DDS, has been accused of failing to keep records of prescription drugs he actually had kept at this home and wrote paper prescriptions for. The Drug Enforcement Administration and Johnstown, PA police have collaborated on charges stemming from a DEA audit of Bach’s practice in 2017 in which he was found to have large quantities of hydrocodone and ibuprofen delivered to his practice. He told the DEA, however that he kept the drugs at home and his dental assistant confirmed to police that in her 20 year career at the practice she had never seen Bach give prescriptions at his office. From February 1, 2015 to January 23, 2017, Bach ordered 700 tramadol HCL tablets and 1,900 hydrocodone tablets. Bach admitted he did not keep records regarding the prescriptions for the drugs. Bach is now charged with obtaining

controlled substances by using forged prescriptions and falsifying records, as well as the misdemeanor of failing to keep proper DEA records.

## **NH ACLU Sues for Indian Soldier/Dentist Denied Citizenship**

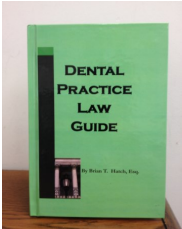
After getting his dental degree from Case Western Reserve University Dental School in 2015, Dr. Hiren Korat, an Indian citizen, was told allegedly by a medical recruiter that as an Army Specialist the naturalization process would be only 10 to 15 weeks. A Littleton, New Hampshire resident, the Korat then served two years in the military and was not close to citizenship. The lawsuit, which is being brought on his behalf by the New Hampshire American Civil Liberties Union, alleges that the U.S. government also promised Korat that it would support his education in oral surgery. The ACLU lawsuit states that Korat was enlisted in the Military Accessions Vital to National Interest program,

which allows for immigrants who agree to enlist in the armed forces to gain citizenship because their medical or language skills are vital to the military.

Korat was required, under a new policy started in 2016 under the Obama administration, to undergo an expanded background check before becoming a U.S. citizen. Although Korat got good reviews and recommendations during his service his background check was returned with “unfavorable results.” He was considered, according to the lawsuit, a “moderate” security risk due to “financial, loyalty and foreign ties” and he could not reenlist. The assessment report noted that Korat could inherit property from his mother only if he remained an Indian citizen and that his parents had both been involved in party politics. Korat’s attorneys said his father died in November, 1998 and his mother’s politician status involved no “intelligence or foreign policy.” In November, 2017 Sen. Jeanne Shaheen, D-NH and Rep. Pete Olsen, R-TX have become involved in the suit.

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